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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/574,423	Applicant(s) MCKECHNIE, MALCOLM TOM	
	Examiner Lorna M. Douyon	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-14 and 18-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14 and 18-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on January 14, 2011.
2. Claims 1-6, 9-14, 18-25 are pending. Claims 7, 8, 15-17 are cancelled. Claims 24-25 are newly added. Claims 1 and 18 are currently amended.
3. With respect to the suggestion of adding a **"Brief Description of the Drawings"** heading into the specification, Applicants decline to enter the suggested heading.
4. The rejection of claims 18-22 under 35 U.S.C. 103(a) as being unpatentable over Lorenzi et al. (US Patent No. 6,322,801) is withdrawn in view of Applicants' amendment.
5. The rejection of claims 1-6, 9-14, 18-23 under 35 U.S.C. 103(a) as being unpatentable over Verdrel-Lahaxe et al. (US 2002/0032135) in view of Shaw et al. (US 2002/0107156) is withdrawn in view of Applicants' amendment.
6. The rejection of claims 1-6, 9-10, 14, 18-23 under 35 U.S.C. 103(a) as being unpatentable over Shaw et al. (US 2002/0107156) is withdrawn in view of Applicants' amendment.

Claim Objections

7. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim. The limitations of claim 11 is already incorporated into claim 1, and therefore does not further limit claim 1.

Claim Rejections - 35 USC § 112

8. Claims 2-6, 9-14 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitation "[A] cleaning article according to claim 1" in each of claims 2-6, 9-14 and 23 lack support with respect to amended claim 1 which now recites a "packaged product". It is suggested that each claim be reworded, for example, "[T]he packaged product according to claim 1 wherein the ..."

Claim 9 depends from cancelled claim 8.

Claim 11 is a repetition of claim 1, lines 4-5.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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10. Claims 1-6, 9-14, 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verdrel-Lahaxe et al. (US 2002/0032135), hereinafter “Verdrel-Lahaxe”, in view of Shaw et al. (US 2002/0107156), hereinafter “Shaw” and further in view of Telesca et al. (US Patent No. 6,412,634), hereinafter “Telesca”.

Verdrel-Lahaxe teaches an article comprising a water-insoluble substrate; and an exothermic composition, comprising: at least one zeolite (which reads on the heat generating agent), at least one surfactant (which reads on the cleaning agent), at least one magnesium or calcium halide (also reads on the heat generating agent); and a physiologically acceptable anhydrous medium (see claim 25). The composition, which is homogeneous, and in the form of a translucent to opaque gel, cream, paste or powder, is impregnated on a wipe (see paragraph [0059] on page 2; which meets claims 4 and 14). The water-insoluble substrate may be a sponge or a wipe, for example a wipe from nonwoven material, the wipe being dry or humid (see paragraph [0090] on page 4) (which meets claims 5 and 10). The expression “exothermic composition” means a composition such that the user experiences a heating sensation when the composition is applied to the skin, and it is a composition whose temperature in the presence of water (water added during its use or the water present in the skin) may instantaneously rise by several degrees (one to twenty degrees), see paragraph [0056] on page 2 (which meets claims 2-3). The zeolites include activated zeolites (see paragraph [0065] on page 2, for example, the zeolites disclosed in U.S. Pat. No. 4,626,550, incorporated herein in its entirety by reference (see paragraph [0069] on page 3), which discloses that activated zeolites are dehydrated zeolites (see col. 5, lines 39-40 of US ‘550)

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(which meets claims 11-13), which releases sufficient heat upon hydration to produce the desired warming effect (see col. 2, lines 14-16 of US 550). The amount of zeolites generally ranges from 5% to 95% by weight (see paragraph [0073] on page 3) (which meets claim 6). The surfactant is preferably a cleansing and/or foaming surfactant which is chosen from nonionic surfactants, anionic surfactants and amphoteric surfactants, and mixtures thereof, and the amount of surfactant(s) may range from 0.5 to 20% by weight, preferably from 1% to 15% by weight of active material relative to the total weight of the composition (see paragraph [0074] on page 3). Even though Verdrel-Lahaxe does not disclose an article adapted for cleaning a surface of an inanimate object (as required in independent claims 1 and 18), or an article adapted to provide for substantially streak free cleaning of inanimate surface (as required in claim 23), it has been held that the recitation that an element is "adapted to" perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. The recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir. 1997). Verdrel-Lahaxe, however, fails to specifically disclose the loading of the cleaning agent on the substrate in amounts as those required in claims 1 and 18-22, 24-25; a water-tight container which optionally includes a resealable opening to accommodate the article in a dry environment as required in the present amended claim 1; a germicidal cationic surfactant as required in claim 9; and the recited process on how the heat generating agent is positioned in the cleaning article as required in new claims 24-25.

Shaw, an analogous art, teaches the equivalency of anionic, nonionic or amphoteric surfactants with cationic surfactants (see paragraph [0041] on page 2). Examples of cationic surfactants are quaternary amines (see paragraph [0090] on page 6), which are also germicidal. Shaw also teaches that when a similar cleansing composition is disposed on the water-insoluble substrate, the articles comprise from about 0.5% to about 3,000% based on the weight of the untreated water insoluble substrate, of the surfactant composition. Preferably, the article comprises at least about 1 gram, by weight of the treated water insoluble substrate, of a surfactant (see paragraph [0116] on page 7).

Telesca, an analogous art, teaches a towelette dispenser which can maintain a stack of towelettes hermetically sealed from the atmosphere (hence, water-tight) during extended periods of time, especially after multiple openings for dispensing of individual tissues (see col. 2, lines 12-16; col. 1, lines 13-26). The towelette dispenser also includes a reusable outer container which after having dispensed most of a stack of towelettes is substantially as efficiently resealable as in its initially fully towelette filled position (see col. 2, lines 17-21; Figure 1). The dispenser provides for an improved, more efficient mechanism for ensuring good seals to prevent moisture or solvents from transferring in either direction through the seals (see col. 2, lines 8-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have disposed or loaded the cleansing composition of Verdrel-Lahaxe into the wipe in its optimum proportions because it is known from Shaw to load a similar article in the range from about 0.5% to about 3,000% based on the weight of

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the untreated water insoluble substrate, of the surfactant composition, or at least about 1 gram, by weight of the treated water insoluble substrate, of a surfactant, hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have packaged the wipes of Verdrel-Lahaxe and Shaw into the dispenser of Telesca because such dispenser will provide for an improved, more efficient mechanism for ensuring good seals to prevent moisture or solvents from transferring in either direction through the seals.

With respect to the germicidal cationic surfactant, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the anionic, nonionic or amphoteric surfactants of Verdrel-Lahaxe with a cationic surfactant (which is also germicidal) because the substitution of art recognized equivalents as shown by Shaw is within the level of ordinary skill in the art.

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With respect to the recited process limitations in claims 24 and 25, please note that claims 24 and 25 are product-by process claims, hence, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

11. Claims 1-6, 9-10, 14, 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw in view of Telesca.

Shaw teaches an article for personal cleansing which comprises a water insoluble substrate with a cleansing composition (see paragraph [0099] on page 7), wherein the cleansing composition in paste form comprises one or more surfactants selected from the group consisting of anionic surfactants, amphoteric surfactants, nonionic surfactants, cationic surfactants, and mixtures thereof (see paragraph [0009] on page 1). Examples of cationic surfactants are quaternary amines (see paragraph [0090] on page 6), which are also germicidal (meets claim 9). The cleaning composition may contain a variety of other components such as are conventionally used in a given product type provided that they do not unacceptably alter the benefits of the invention (see paragraph [0127] on page 8), examples include additional antimicrobial agents,

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e.g., quaternium-15 (which also reads on claim 9) and particular zeolites (which read on the heat generating agent of claim 1), and such materials can be incorporated into the cleansing composition from about 0.01% to about 40% by weight (which meets claim 6). Additionally, these components can be applied to the substrate sheet as a deposit separate from that of the cleansing composition (see paragraph [0128] on page 8) (which meets claims 4 and 14). The water insoluble substrate comprises at least one layer, a substrate sheet to which the paste form cleansing composition is applied (see paragraph [0099] on page 7). Suitable materials for use as sheets of the water insoluble substrate include nonwovens, wovens or sponges (see paragraph [0121] on page 8) (which meets claims 5 and 10). Shaw also teaches that when a similar cleansing composition is disposed on the water-insoluble substrate, the articles comprise from about 0.5% to about 3,000% based on the weight of the untreated water insoluble substrate, of the surfactant composition. Preferably, the article comprises at least about 1 gram, by weight of the treated water insoluble substrate, of a surfactant (see paragraph [0116] on page 7). The articles are intended to be wetted with water prior to use, and the article is wetted by immersion in water or by placing it under a stream of water (see paragraph [0163] on page 10), which meet claims 2-3). Shaw, however, fails to specifically disclose a water-tight container which optionally includes a resealable opening to accommodate the article in a dry environment as required in the present amended claim 1; the loading of the cleaning agent on the substrate in amounts as those required in claims 1 and 18-22, 24-25; and the recited process on how the heat generating agent is positioned in the cleaning article as required in new claims 24-25.

Telesca, an analogous art, teaches a towelette dispenser which can maintain a stack of towelettes hermetically sealed from the atmosphere (hence, water-tight) during extended periods of time, especially after multiple openings for dispensing of individual tissues (see col. 2, lines 12-16; col. 1, lines 13-26). The towelette dispenser also includes a reusable outer container which after having dispensed most of a stack of towelettes is substantially as efficiently resealable as in its initially fully towelette filled position (see col. 2, lines 17-21; Figure 1). The dispenser provides for an improved, more efficient mechanism for ensuring good seals to prevent moisture or solvents from transferring in either direction through the seals (see col. 2, lines 8-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have packaged the wipes of Shaw into the dispenser of Telesca because such dispenser will provide for an improved, more efficient mechanism for ensuring good seals to prevent moisture or solvents from transferring in either direction through the seals.

With respect to the loading of the cleaning agent on the substrate, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*,

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627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEF 2131.03 and MPEP 2144.05I.

With respect to the recited process limitations in claims 24 and 25, please note that claims 24 and 25 are product-by process claims, hence, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re Brown*, 173 USPQ 685 and *In re Fessmann*, 180 USPQ 324.

12. Claims 11, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw and Telesca as applied to the above claims, and further in view of Verdrel-Lahaxe.

Shaw and Telesca teach the features as described above. Shaw and Telesca, however, fail to specifically disclose the zeolites as being dehydrated.

Verdrel-Lahaxe teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the zeolite of Shaw and Telesca into dehydrated zeolites because such dehydrated zeolites will provide sufficient heat upon hydration to produce the desired warming effect as taught by Verdrel-Lahaxe.

Response to Arguments

13. Applicants' arguments filed on January 14, 2011 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon Verdrel-Lahaxe in view of Shaw in further view of Telesca, **or** Shaw in view of Telesca, Applicants argue that Telesca is limited to providing a refillable container which comprises a plurality of personal care articles, and does not explicitly teach the utility of the refillable container for use in storing and dispensing a cleaning agent and loaded with a heat generating agent. Applicants also argue that Verdrel-Lahaxe does not teach or indicate the desirability or necessity of providing a laden wipe in a sealed container to avoid hydration of Verdrel-Lahaxe's compositions. Applicants also argue that Shaw is not concerned with "a substrate loaded with a cleaning agent and loaded with a heat generating agent which is selected from a dehydrated salt, other mineral or mixture thereof". Applicants also argue that the reliance upon the references is a hindsight reconstruction, using Applicants' claims as a template to reconstruct the invention by picking and choosing isolated disclosures from the prior art.

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In response to applicants, argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). It is clear that Verdrel-Lahaxe, one of the primary references, teaches an article comprising a water-insoluble substrate; and an exothermic composition, comprising: at least one zeolite (which reads on the heat generating agent), at least one surfactant (which reads on the cleaning agent), at least one magnesium or calcium halide (also reads on the heat generating agent); and a physiologically acceptable anhydrous medium (see claim 25). The zeolites are activated zeolites, which are dehydrated zeolites as disclosed in U.S. Pat. No. 4,626,550 (which is incorporated by reference; see paragraph [0069] on page 3 and col. 5, lines 39-40 of US '550). The composition is impregnated on a wipe (see paragraph [0059] on page 2), made from nonwoven material, the wipe being dry (see paragraph [0090] on page 4). Verdrel-Lahaxe, in paragraph [0056] on page 2, also teaches that the expression "exothermic composition" means a composition such that the user experiences a heating sensation when the composition is applied to the skin, and it is a composition whose temperature in the presence of water (water added during its use or the water present in the skin) may instantaneously rise by several degrees (one to twenty degrees). With these teachings,

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it is understood that the composition or the wipe containing the composition, whose function is to generate heat when exposed to water, is prevented from being exposed to water, therefore, the composition or the composition impregnated into the wipe is packaged in a sealed container to avoid premature reaction with water. Hence, Telesca, was relied upon in the teaching of a package or a towelette dispenser which can maintain a stack of towelettes hermetically sealed from the atmosphere (hence, water-tight) during extended periods of time, especially after multiple openings for dispensing of individual tissues (see col. 2, lines 12-16; col. 1, lines 13-26). The towelette dispenser also includes a reusable outer container which after having dispensed most of a stack of towelettes is substantially as efficiently resealable as in its initially fully towelette filled position (see col. 2, lines 17-21; Figure 1). Shaw, is relied upon in combination with Verdrel-Lahaxe, because Verdrel-Lahaxe is silent as to the loading concentration of the cleaning agent into the substrate. Verdrel-Lahaxe teaches the impregnation of the cleaning composition into the wipe, however, the loading concentration is not specifically disclosed, therefore, one of ordinary skill in the art would look into the prior art's conventional loading concentration, and one example is Shaw, which is analogous art (i.e., relates to personal cleansing product, see paragraph [0002] on page 1 of Shaw) who teaches the conventional loading concentration as already discussed above, whose loading concentration overlaps those recited.

With respect to obviousness rejection based upon Shaw in view of Telesca, please note that Shaw teaches an article for personal cleansing which comprises a water insoluble substrate with a cleansing composition (see paragraph [0099] on page

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7), which may contain a variety of other components such as are conventionally used in a given product type provided that they do not unacceptably alter the benefits of the invention (see paragraph [0127] on page 8), and one example is zeolites (which read on the heat generating agent of claim 1), and such materials can be incorporated into the cleansing composition from about 0.01% to about 40% by weight (see paragraph [0128] on page 8). Shaw also teaches that the articles are intended to be wetted with water prior to use (see paragraph [0163] on page 10), therefore, one of ordinary skill in the art would package the articles in suitable containers such as those taught by Telesca.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1761

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